Alliance Bank Malaysia Bhd v Hapsah bt Md Nor & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S-24–2395 OF 2009
LEE SWEE SENG JC
2 SEPTEMBER 2010

Civil Procedure — Interpleader proceedings — Interpleader summons — Determination of rightful claimant to surplus of auction proceeds — Whether pre-conditions to filing of application satisfied — Whether applicant bank had expectation of being sued either by first and second respondents or third respondent — Whether applicant bank entitled to relief by way of interpleader — Rules of the High Court 1980 O 17 r 3

Islamic Law — Jurisdiction — Syariah Courts — Dispute with respect to distribution of estate of deceased Muslim — Whether dispute within purview of Syariah Court — Whether High Court could question Syariah Court order injuncting distribution of surplus auction proceeds until actions before Syariah Court disposed of

When Abdul Aziz bin Ahmad ('the deceased') died on 19 April 2005, his land was charged as security to the Alliance Bank Malaysia Bhd ('the applicant bank'). On 12 June 2008, the applicant bank obtained an order for sale of the land by way of public auction because of default by the deceased. The land was successfully auctioned on 16 March 2009, leaving a surplus sum of RM530,956.05 ('the surplus of the auction proceeds'). The first and second respondents, the administrators of the estate of the deceased and the only beneficiaries stated in the grant of letters of administration, claimed to be entitled to receive the surplus of the auction proceeds. However, the third respondent, the younger brother of the deceased, obtained a Syariah Court order dated 14 May 2009 which, inter alia, prohibited the first and second respondents from receiving the surplus of the auctions proceeds. Instead the Syariah Court order stated that any surplus from the auction proceeds had to be kept with Amanah Raya Bhd. The conflicting claims of the first and second respondents on the one hand and the third respondent on the other compelled the applicant bank to apply for the instant interpleader summons under O 17 of the Rules of the High Court 1980 ('RHC'), for an order and/or further directions as to who should rightly receive the surplus auction proceeds, with costs to be paid by the respondents. The sole issue to be determined by the

court in this case was whether the applicant bank was entitled to relief by way of interpleader.

Held, allowing the applicant's applicationwith costs:

(1) In the present case, the applicant bank had an expectation of a legal action being taken against it either by the first and second respondents or the third respondent and this satisfied the requirement of 'expects to be sued' under O 17 r 3(1) of the RHC. The expectation of being sued would suffice rather than actually being sued and any delay in bringing an interpleader summons might expose the applicant bank to a charge of having delayed in the matter, showing a lack of bona fide in the matter or having an interest in the subject matter or even colluding with one of the claimants (see paras 8–9).

(2) Although the grant of letters of administration states that the first and second respondents are the only beneficiaries and thus entitled to the surplus from the auction proceeds under s 268(3) of the National Land Code ('NLC'), the applicant bank had knowledge of the Syariah Court order. Thus, if the applicant bank were to ignore the Syariah Court order and pay out the surplus auction proceeds to the first and second respondents, it would be exposing itself to a contempt action or an action in negligence for acting contrary to the said court order. As such, there are real and genuine competing claims in this case for the applicant bank to apply for an interpleader summons. Further the other requirements of O 17 r 3(3) (a)–(c) of the RHC have all been met (see paras 11–13).

(3) Any distribution of the estate of a deceased Muslim has to follow the *Sijil Faraid* issued by the Syariah Court in the event of a dispute. Thus in the instant case, where there is a Syariah Court order injuncting the first and second respondents from receiving the surplus of the auction proceeds until the actions before the Syariah Court are disposed of, it was not for this court to question the wisdom of the Syariah Court that gave the order for a matter that was within its purview. It was thus ordered that the surplus of the auction proceeds less charges allowed under the NLC be paid into a joint-solicitors' account for the solicitors for the first and second respondents and solicitors for the third respondent until the disposal of all litigation involving the estate of the deceased in both the Syariah and the civil courts (see paras 16, 19 & 22).

[Bahasa Malaysia summary

Apabila Abdul Aziz bin Ahmad ('si mati') meninggal dunia pada 19 April 2005, tanahnya telah digadaikan sebagai cagaran kepada Alliance Bank Malaysia Bhd ('bank pemohon'). Pada 12 Jun 2008, bank pemohon memperoleh perintah jualan tanah tersebut secara lelongan awam kerana kegagalan membayar oleh si mati. Tanah tersebut telah berjaya dilelong pada 16 Mac 2009, meninggalkan

jumlah baki sebanyak RM530,956.05 ('baki hasil jualan lelongan'). Responden pertama dan kedua, pentadbir harta pusaka si mati dan satu-satunya benefisiari yang dinyatakan di dalam surat pentadbiran, menuntut sebagai berhak menerima baki hasil jualan lelongan tersebut. Walau bagaimanapun, responden ketiga, adik lelaki si mati, memperoleh perintah Mahkamah Syariah bertarikh 14 Mei 2009 yang, antara lain, melarang responden pertama dan kedua daripada menerima baki hasil jualan lelongan. Sebaliknya perintah Mahkamah Syariah menyatakan bahawa apa-apa lebihan daripada hasil jualan lelongan perlu disimpan dengan Amanah Raya Bhd. Tuntutan yang bertentangan responden pertama dan kedua di satu pihak dan responden ketiga di pihak yang satu lagi menyebabkan bank pemohon untuk memohon saman interplider segera di bawah A 17 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), untuk perintah, dan/atau arahan lanjut mengenai siapa yang berhak menerima baki hasil jualan lelongan, dengan kos dibayar oleh responden-responden. Satu-satunya isu untuk pertimbangan mahkamah di dalam kes ini adalah sama ada bank pemohon berhak untuk relief secara interplider.

Diputuskan, membenarkan permohonan pemohon dengan kos:

(1) Di dalam kes ini, bank pemohon mempunyai jangkaan bahawa tindakan undang-undang akan diambil terhadapnya sama ada oleh responden pertama dan kedua atau responden ketiga dan ini memenuhi keperluan 'expects to be sued' di bawah A 17 k 3(1) KMT. Jangkaan akan disaman adalah mencukupi daripada sebenarnya disaman dan apa-apa kelewatan dalam membawa saman interplider akan mendedahkan bank pemohon kepada tuduhan melambatkan perkara ini, yang akan menunjukkan ketiadaan bona fide di dalam perkara tersebut atau mempunyai kepentingan di dalam subjek perkara atau berpakat dengan salah seorang penuntut (lihat perenggan 8–9).

(2) Walaupun surat pentadbir menyatakan bahawa responden pertama dan kedua adalah satu-satunya benefisiari dan oleh itu berhak kepada lebihan daripada hasil jualan lelongan di bawah s 268 Kanun Tanah Negara ('KTN'), bank pemohon mempunyai pengetahuan mengenai perintah Mahkamah Syariah. Oleh itu jika bank pemohon tidak mengendahkan perintah Mahkamah Syariah dan membayar baki hasil jualan lelongan kepada responden pertama dan kedua, ia akan mendedahkan dirinya sendiri kepada tindakan penghinaan atau tindakan dalam kecuaian kerana bertindak menentang perintah mahkamah tersebut. Oleh itu, terdapat tuntutan yang sebenar dan sahih di dalam kes ini untuk bank pemohon memohon untuk saman interplider. Selanjutnya, keperluan-keperluan lain A 17 k 3(3)(a)–(c) KMT kesemuanya telah dipenuhi (lihat perenggan 11–13)

(3) Apa-apa pembahagian harta pusaka orang Islam yang meninggal dunia

harus mematuhi *Sijil Faraid* yang dikeluarkan oleh Mahkamah Syariah jika terdapat pertikaian. Oleh itu di dalam kes ini, di mana terdapat perintah Mahkamah Syariah yang menghalang responden pertama dan kedua daripada menerima baki hasil jualan lelongan sehingga tindakan di Mahkamah Syariah diputuskan, ia bukan untuk mahkamah ini untuk mempersoalkan kebijaksanaan Mahkamah Syariah yang memberikan perintah tersebut bagi perkara yang di dalam bidang kuasanya. Oleh demikian diperintahkan bahawa lebihan hasil jualan lelongan ditolak caj-caj yang dibenarkan di bawah KTN dibayar ke dalam akaun peguamcara bersama kepada peguamcara responden pertama dan kedua dan peguamcara kepada responden ketiga sehingga pelupusan kesemua litigasi yang melibatkan harta pusaka si mati di kedua-dua mahkamah Syariah dan sivil (lihat perenggan 16, 19 & 22).]

Notes

For cases on interpleader summons, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 4052–4072.

For cases on Syariah Courts, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 687–700.

Cases referred to

Ng Wan Chan v Majlis Ugama Islam Wilayah Persekutuan & Anor (No 2) [1991] 3 MLJ 487, HC (refd)

Peter Yip Shou Shan v George Kent (M) Bhd & Anor [2002] 2 MLJ 146; [2002] 2 CLJ 205, HC (refd)

RHB Bank Bhd v Amalan Tepat Sdn Bhd & Ors ; [2007] 7 CLJ 379, HC (refd)

RHB Bank Bhd v Comax Sdn Bhd & Anor [1999] 3 CLJ 552, HC (folld)

Re Ridzwan bin Ibrahim [2002] 4 AMR 4318, HC (folld)

Umi Khalsom bt Mohamed & Anor (As Joint Administrators of the Estate of Md Rosly bin Abdul Manap) v Haliza Hassan & Anor [2009] 8 MLJ 609; [2009] 9 CLJ 729, HC (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 s 46(1)(2)(b), 46(2)(b)(iv)

Federal Constitution art 121(1A), Ninth Schedule List ll (State List)

National Land Code ss 268(3), 339(c), Form 16Q

Rules of the High Court 1980 O 17 rr 1(1)(a), 3(3)(a), (b), (c)

Susie Ling Kiong (Yeap, Yong & Amy) for the applicant.
Rohani Ibrahim (Syed Ibrahim & Co) for the first and second respondents.
Baharuddin Ali (Norfairozal & Co) for the third respondent.

Lee Swee Seng JC:

PROLOGUE

[1] Long time ago two women claimed that they are the rightful mother to a baby and so they brought their dispute before King Solomon. Those days a king exercising executive powers was also a judge exercising judicial powers. There was no DNA test available then and so Solomon in the guise of meting out rough justice said he would use his sword to cut the baby into two and gave each one of the mothers a part. One woman said that was a very fair and just decision whereas the other immediately implored that if that was going to be the decision of the wise King, then she rather that the other woman had the baby. The King saw through the deceit and lies of the woman who had poured praises on the King for his wise decision and sentenced her to death. The real mother of the baby was handed the baby and she was overjoyed to receive her baby back and overawed at the impeccable decision of such a wise King.

[2] The current concept for an interpleader summons can perhaps be traced back to the above story. Two parties staging and staking their claims on a piece of property or a sum of money. This is what happened here where the administrators for the estate of a deceased are saying that they are entitled to the proceeds from the auction of a piece of property pursuant to an order for sale taken out by the applicant bank and a younger brother of the deceased also staking his claim to the deceased assets and complaining that the wife of the deceased and the daughter of the deceased as administrators of the estate of the deceased had left out the names of the other beneficiaries from getting their share of the deceased's estate by leaving them out from the list of beneficiaries in the grant of letters of administration. Only two beneficiaries who are also the two administrators are stated in the said grant of letters of administration.

PARTIES

[3] The deceased Abdul Aziz bin Ahmad died on 19 May 2005 and was the registered owner of a piece of land in Kuala Lumpur. The deceased had charged the land to the applicant bank as security for an overdraft facility granted to him. An order for sale was obtained on 12 June 2008 for sale of the land by way of public auction because of default by the deceased. The property was successfully auctioned on 16 March 2009 for a purchase price of RM1,525,000. The purchase price duly paid in full by the successful bidder on 12 June 2009 was utilised in accordance with the National Land Code 1965 ('NLC') leaving a surplus sum of RM530,956.05 (surplus of auction

proceeds). The applicant had filed a Form 16Q with the High Court on 21 August 2009 setting out the statement as to payment due in connection with a sale by public auction.

[4] The first and second respondents were jointly appointed as administrators of the estate of the deceased vide an order of the High Court for Letters of Administration No S2–31–824 of 2005 dated 26 April 2006. They are both the only beneficiaries stated in the grant of letters of administration.

[5] The third respondent is the younger brother of the deceased.

PROBLEM

[6] On 28 May 2009 the applicant's solicitors received a letter from the third respondent's solicitors enclosing an order from the Kuala Lumpur Syariah Court (Application No 14600–032–0040 of 2009) dated 14 May 2009 (the Syariah Court order) which, inter alia, prohibits the first and second respondents from receiving the surplus of the auction proceeds or any form of auction proceeds from the applicant in respect of the sale of the land. The above injunction is until the disposal of two cases before the Syariah Court ie Summons No 14200–017–0012 of 2006 and Summons No 14200–041–0253 of 2007. The Syariah Court order stated further that any surplus from the auction proceeds has to be kept with Amanah Raya Bhd.

[7] The service of the Syariah Court order had resulted in a delay in the refund of the surplus of the auction proceeds to the first and second respondent as there are two competing parties claiming the surplus of the auction proceeds.

PRAYER

[8] Being pulled by both sides the applicant solicitors did what any right-minded solicitors would do: they applied for an interpleader summons for an order and/or further directions with respect to whether it is the first and second respondents on the one hand or the third respondent on the other, that should rightly receive the surplus auction proceeds and that alternatively an order for the surplus auction proceeds be paid into court or such other order as may be deemed just and reasonable by the court. The applicant also prayed for cost to be paid by the respondents.

PRINCIPLE

[9] The applicant had applied for the above interpleader summons pursuant to O 17 r 1(1)(a) Rules of the High Court 1980 ('RHC') which reads:

(1) Where—

(a) A person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereon, or

(b) ...

the person under liability as mentioned in sub-paragraph (a)... may apply to the Court for relief by way of interpleader.

[10] I find that the requirement of 'expects to be sued' has been satisfied as if the applicant does not make this application to court, it can expect to find the first and second defendant, who had already complained to Bank Negara to follow through with a formal demand in writing from their solicitors and legal action taken. The legal action need not have to be filed and served on the applicant already. So long as the applicant has an expectation of a legal action being taken against it is sufficient to meet the requirement of 'expects to be sued'. An expectation of being sued would suffice rather than actually being sued. Waiting for one to be sued might be a long wait sometimes and any delay in bringing an interpleader summons might expose the applicant to a charge of having delayed in the matter and perhaps showing a lack of bona fide in the matter or worse still, having an interest in the subject matter or even colluding with one of the claimants.

[11] In *RHB Bank Bhd v Amalan Tepat Sdn Bhd & Ors* ; [2007] 7 CLJ 379 at p 383 His Lordship Low Hop Bing J (as he then was) said:

In *Tong Lee Co Pte Ltd v Koh Chiow Meng & Anor* Mallal's Digest of Malaysian and Singapore Case Law, 4th Ed 1998 Reissue para 2426, KS Rajah JC of the Singapore High Court explained that interpleader proceedings are not, in the strictest sense, proceedings against anybody, but it is a proceeding, the object of which is to extricate the claimant, the solicitors in this case, from the embarrassment of being sued, or likely to be sued, by more than one party in respect of the same subject matter, and also having as its object to put the claimants in a position in which, if they are going to insist upon their claims, they should do so when the application was made.

[12] The applicant having been served with the Syariah Court order cannot brush the matter aside as knowledge of an order of court of competing jurisdiction may expose one to a contempt action or an action in negligence if one goes ahead and acts contrary to the court order as in paying out the surplus of the auction proceeds to the first and second respondents. Part of the complaint leveled against the first and second respondents is that in the list of beneficiaries to the estate of the deceased, only the names of the first and second

respondents are stated as beneficiaries whereas the other siblings of the deceased including the third respondent had been left out.

[13] The third defendant states that there is a case in Summons No 14200–017–0012 of 2006 which is the claim of the first respondent for *harta sepencarian* and there is also another case in Summons No 14200–041–0253 of 2007 which is the claim by the third respondent for determination of the validity of the second respondent as the legitimate daughter of the deceased. The former summons of the first respondent has been dismissed by the Syariah High Court whereas the latter is still afoot.

[14] The first and second respondents are conscious of their rights as administrators of the estate of the deceased with respect to a charged property auctioned with surplus from the auction proceeds. Section 268(3) of the National Land Code already provided that the residue, if any, of the purchase money shall, subject to sub-s (3) of s 339, be paid to the chargor.

[15] I am more than satisfied that there are genuine competing claims in this case for the applicant bank to take out this interpleader following the test laid down by Zainun Ali J (as she then was) in *RHB Bank Bhd v Comax Sdn Bhd & Anor* [1999] 3 CLJ 552 where at p 557 it was observed that:

> The conflict between the claimants must be real in the sense that each claim, if proven, would give a good cause of action against the applicant, so that where the applicant is not under any obligation to one of the claimants, or where he can, without incurring any liability, pay the subject matter of the claim to one of the claimants, he is not entitled to relief (of interpleader).

[16] Section 46(1)(2)(b) of the Administration of Islamic Law (Federal Territories) Act 1993 provides:

> (1) A Syariah High Court shall have jurisdiction throughout the Federal Territories and shall be presided over by a Syariah Judge.
>
> (2) A Syariah High Court shall —
>
> (b) in civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to—
>
> (iv) the division of, or claims to, *harta sepencarian*;...
>
> (viii) division and inheritance of testate or intestate property;
>
> (ix) the determination of the persons entitled to share in the estate of a deceased Muslim or of the shares to which such persons are respectively entitled;

[17] I adopt the approach taken by Her Ladyship Heliliah Mohd Yusof J (as she then was) in *Re Ridzwan bin Ibrahim* [2002] 4 AMR 4318 where she had followed the dicta of Eusoff Chin J (as he then was) in *Ng Wan Chan v Majlis Ugama Islam Wilayah Persekutuan & Anor (No 2)* [1991] 3 MLJ 487 with reference to art 121(1A) of the Federal Constitution where His Lordship observed:

> However, art 121(1A) states that the High Courts and inferior courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts...
>
> The Federal Constitution, Ninth Schedule List ll (State List), specifically gives powers to the State legislatures to constitute Muslim courts and when constituted, 'shall have jurisdiction only over persons professing the Muslim religion and in respect only any of the matter included I this paragaraph'.
>
> Therefore, a Syariah Court derives its jurisdiction under a state law, for Federal Territories Act of Parliament) over any matter specified in the State List under the Ninth Schedule of the Federal Constitution.

[18] Whatever is the nature of the dispute with respect to who are the beneficiaries of the estate of the deceased and in what proportion these are entitled to share in the estate of the deceased is something within the sole purview of the Syariah High Court and any distribution of the estate of a deceased Muslim has to follow the *Sijil Faraid* issued by the Syariah Court in the event of a dispute.

[19] It was contended that the third respondent has no locus to sue the applicant but I am unable to agree. Surely if the third respondent had already put the applicant on notice and should the applicant bank still continue to release the surplus of the auction proceeds to the first and second respondents the third respondent would surely have a cause of action against the applicant.

[20] In *Umi Khalsom bt Mohamed & Anor (as Joint Administrators of the Estate of Md Rosly bin Abdul Manap) v Haliza Hassan & Anor* [2009] 8 MLJ 609; [2009] 9 CLJ 729, Mohamed Apandi J (as he then was) observed that:

> ... The plaintiff's rights to the shares was lawfully given by a court with competent jurisdiction under s 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993. The defendant could not question the validity of the Syariah Court's order.

[21] Here there is a Syariah Court order injuncting the first and second respondents from receiving the surplus of the auction proceeds until the two actions in the Syariah Courts are disposed of. It is not for this court to question the wisdom of the Syariah Court that gave the order for a matter that comes within its purview. If the first and second respondents are dissatisfied with the

said order, they can always apply to set aside the injunctive order or to appeal against the order given as they may be advised by their Syariah lawyers.

[22] I am also satisfied that the other requirements in O 17 r 3(3)(a)(b) and (c) of the RHC have been met in that:

(a) the applicant has no interest in the subject-matter of the dispute with respect to the surplus of the auction proceeds;

(b) the applicant is not in collusion with any of the respondents to this action and

(c) the applicant is ready and willing to pay the surplus of the auction proceeds into court if so ordered.

[23] On the issue of costs my attention was drawn to the case of *Peter Yip Shou Shan v George Kent (M) Bhd & Anor* [2002] 2 MLJ 146; [2002] 2 CLJ 205 at p 208 where Abdul Aziz Mohamad J (as he then was) gave this guidance:

> An applicant for relief by way of an interpleader, in a proper application, should, in principle, not be liable to pay costs but should instead be paid costs by either of the claimants, because it is their conflicting claims that have compelled him to seek relief. The claimant liable to pay costs of the applicant should be the claimant who fails in the claim and who should also bear the costs of the successful claimant.

PRONOUNCEMENT

[24] After a careful consideration of the conflicting claims of the claimants and the conundrum faced by the applicant bank, I made an order that the surplus of the auction proceeds less charges allowed under the National Land Code be paid into a joint-solicitors' account of the solicitors for the first and second respondents and of the solicitors for the third respondent within three weeks from the order and that the same be placed in fixed deposit until the disposal of all litigation involving the estate of the deceased in both the Syariah as well as the civil courts. I also order that the sum of RM1,000 as costs be paid from the estate of the deceased to the applicant.

Applicant's application allowed with costs.

Reported by Kohila Nesan